

3601 Vincennes Road, Indianapolis, Indiana 46268
Phone: 317.875.5250 | Fax: 317.879.8408

122 C Street N.W., Suite 540, Washington, D.C. 20001
Phone: 202.628.1558 | Fax: 202.628.1601

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Statement of the National Association of Mutual Insurance Companies

SB-763, "An Act Concerning the Connecticut Unfair Insurance Practices Act"

Paul Tetrault, Northeast State Affairs Manager

Insurance and Real Estate Committee

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The National Association of Mutual Insurance Companies opposes SB-763, "An Act Concerning the Connecticut Unfair Insurance Practices Act," in the strongest possible terms. Founded in 1895, NAMIC is the nation's largest property and casualty insurance trade association. NAMIC members underwrite more than 40 percent (\$178 billion) of the property/casualty insurance premium written in the United States.

In NAMIC's view, SB-763 represents a wholly unwarranted expansion of Connecticut's Unfair Insurance Practices Act that would negatively affect the insurance claims process and lead to a dramatic increase in litigation. Its enactment could produce a substantial rise in costs ultimately borne by individuals and businesses that purchase insurance. As such, while this legislation would be a cause for concern under any circumstances, but it is particularly worrisome that it is being considered in these strained economic times.

SB-763 would change the existing statute in two ways. Each is troubling independently, and their troubling effects are compounded when combined. The bill would eliminate from the Unfair Insurance Practices Act the need to show that enumerated practices were committed "with such frequency as to indicate a general business practice." And where the existing statute calls for enforcement by the insurance commissioner, the bill would create a private cause of action that would enable anyone, either insureds or third-party claimants, to sue insurance companies to collect not only actual but also punitive damages.

The combined effect of these provisions would be an extremely low threshold for litigation, such that a suit could be brought by anyone for a single alleged violation. If this bill became law, insurers would be subject to a multitude of lawsuits alleging violations of the statute. Virtually every claim dispute would potentially be transformed into a court case. It is important to note in this regard that a claim under the statute need not be valid or ultimately adjudicated in the claimant's favor in order to result in substantial costs being incurred by an insurer.

Even in cases in which suits were not filed, the low litigation threshold would result in an ever-present threat of litigation that would place improper pressure on the claims process. This dynamic could prompt

insurers into settling what may be questionable claims or settling claims for higher amount than may be warranted. A fuller exposition of the complications and costs that arise from excessive bad faith liability, such as would be created by this bill, can be found in a public policy paper published by NAMIC last year, "First Party Insurance Bad Faith Liability: Law, Theory and Economic Consequences," which I have submitted with my testimony¹. The paper suggests that bad faith legislation recently enacted in other states "will create incentive distortions that may lead to greater uncertainty and higher costs for insurers, higher levels of insurance fraud, and correspondingly higher insurance premiums for consumers."

Likewise, SB-763 would cause insurers to incur higher costs from increased litigation and higher claims settlement costs. This would inevitably result in upward pressure on the cost of insurance, at a time when individuals and businesses are already struggling with existing expenses.

In NAMIC's view, the increase in costs that would be incurred from passage of SB-763 is completely unwarranted because the current statute provides a remedy that is more than adequate to protect consumers and promote appropriate conduct by insurers. The current statute, which is based on a model law of the National Association of Insurance Commissioners, outlines a procedure under which the insurance commissioner can initiate proceedings upon belief that any person has been wronged by violation of the act. The statute allows the commissioner to assess substantial penalties of up to \$250,000 for knowing violations and to order restitution. The existing statutory framework provides the commissioner with ample authority to protect Connecticut consumers.

Thank you for the opportunity to present NAMIC's views on this important subject. I would be happy to answer any questions.

Paul Tetrault, JD, ARM, AIM
Northeast State Affairs Manager
National Association of Mutual Insurance Companies
ptetrault@namic.org
(978) 969-1046

¹ Available for download at <http://www.namic.org/insbriefs/080926BadFaith.pdf>.